

REMARKS

Claims 1-57 are currently pending in this Application. Claims 1-12 and 17 stand rejected. Claims 13-16 and 18-57 have been withdrawn from consideration by the Examiner at this time. In this Response, claims 1, 6, and 23 have been amended. Support for the amendments can be found, for example, on page 4, lines 25-30, of the instant specification. Claims 1-12 and 17 are pending and under consideration by the Examiner.

The rejection levied by the Examiner in the outstanding Office Action is addressed below.

Claim Rejection under 35 U.S.C. § 103

Claims 1-12 and 17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over International Publication No. WO01/25243 ("Alberto"). Applicant respectfully disagrees.

Applicant does not see any reason why one of ordinary skill in the art would modify Alberto to produce the invention as claimed, or how one skilled in the art would combine known elements, or substitute one known element for another, to predictably reach the invention as claimed. The Patent Office must provide an articulated reasoning as to why the claimed invention would have been obvious in view of the references, as is required to support a *prima facie* case of obviousness under § 103(a).

Alberto fails to teach or suggest a pharmaceutical composition comprising a boranocarbonate compound or ion, and a pharmaceutically acceptable carrier, as recited in amended claim 1. In fact, nowhere in Alberto are pharmaceutically acceptable carriers described. Alberto also fails to teach pharmaceutical compositions for the stimulation of neurotransmission, vasodilation or smooth muscle relaxation by CO as a physiologically effective agent, or for the treatment of any of acute or chronic systematic hypertension, radiation damage, endotoxic shock, hyperoxia-induced injury, apoptosis, cancer, transplant rejection, post-operative ileus, arteriosclerosis, post-ischemic organ damage, angina, haemorrhagic shock, sepsis, penile erectile dysfunction, vascular restenosis, hepatic cirrhosis, cardiac hypertrophy, heart failure and ulcerative colitis or for treatment in balloon angioplasty, aortic transplantation or survival of a transplanted organ. By contrast, Alberto discloses compounds which are used in the labeling of certain compounds and as reducing agents in the preparation of transition metal carbonyl complexes.

Applicant disagrees with the assertion by the Examiner that, because Alberto describes the use of carbonyl complexes in “circumstances wherein a CO source is required,” Alberto therefore discloses pharmaceutical compositions for “vasodilation or smooth muscle relaxation by CO.” Office Action at page 4. Although Alberto includes a broad description of compositions that may be used as a carbon monoxide source, Alberto includes no description of compositions that are used in combination with a pharmaceutically acceptable carrier or for therapeutic purposes.

Thus, those of ordinary skill in the art would not have had reason to modify the teachings of Alberto to produce the invention as claimed, as suggested by the Examiner. Also, there would have been no reasonable expectation of success in modifying the teachings of Alberto to predictably achieve the invention as claimed.

Because all claim limitations are not taught or suggested by Alberto, and there is no articulated reasoning as to why one of ordinary skill in the art would modify the teachings of Alberto to predictably achieve the invention as claimed, claim 1 is patentable over Alberto. Claims 2-12 and 17 depend from claim 1 and, thus, are also patentable over Alberto.

Accordingly, withdrawal of the rejection of these claims is respectfully requested.

In view of the above, Applicant believes the pending Application is now in condition for allowance.

If any unpaid fee is due with this Response, please charge it to our Deposit Account No. 23/2825, under Docket No. H0817.70003US00, from which the undersigned is authorized to draw.

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Respectfully submitted,

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